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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.S., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B290330
(Super. Ct. No. 18JV-00064A)
(San Luis Obispo County)

THE PEOPLE,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

The San Luis Obispo County District Attorney filed a petition under Welfare and Institutions Code section 602, subdivision (a) alleging two counts of possession of drug paraphernalia in violation of Health and Safety Code section 11364, subdivision (a). Appellant C.S. admitted one count and the other was dismissed. The juvenile court declared appellant a ward of the court and placed him on probation. One probation

condition permits law enforcement to search appellant's electronic devices. Appellant contends this condition bears no relationship to his offense and is constitutionally overbroad. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 15, 2017, an officer of the Grover Beach Police Department observed Irving Segura, a known gang member, sitting on a bench outside a restroom. Segura told the officer his friend was in the restroom. A short while later, appellant appeared with a backpack. The officer obtained consent to search the backpack and recovered a glass methamphetamine pipe with residue on it. Appellant claimed he found the backpack and denied the pipe belonged to him. The officer subsequently discovered the backpack belonged to appellant's brother.

On October 19, 2017, deputies from the San Luis Obispo County Sheriff's Department responded to a call regarding suspicious activity. Upon arrival, the deputies encountered appellant and Jordan Fairbairnhern. One of the deputies saw tin foil with burn marks on the ground next to appellant. Appellant and Fairbairnhern denied that the foil belonged to them. Appellant claimed the item came from a backpack he had recently found and emptied so he could place his own belongings inside. A search of the backpack revealed two methamphetamine pipes and a small plastic baggie. Appellant's mother later informed the deputies that appellant was a methamphetamine user and had recently been cited for the same offense.

Appellant admitted to a probation officer that he started smoking marijuana at age 13 and has smoked every day since then. He started using methamphetamine at age 16 and admitted to smoking about a half gram every day. He also has tried other drugs, including heroin. In addition, appellant

admitted to being “popped in” to the Oceano 13 Street Gang. He displayed his gang affiliation through clothing and a tattoo.

The juvenile court’s probation order requires appellant to “[s]ubmit any electronic device, used to store or transmit digital information, that you own, possess or control, to a search of any source of electronic data identified below, at any time, with or without probable cause, by a peace officer, and provide the peace officer with any passwords necessary to access the data source specified.” Sources of electronic data identified in the probation condition are limited to: text messages, voicemail messages, call logs, photographs, email accounts, social media accounts and internet browsing history. The order further states that the “rehabilitative and/or supervisory concerns addressed by this search term include the following:” “[d]rug/alcohol use or drug sales,” “[g]ang related behavior” and “[a]ssociation with court ordered non-associates.”

Defense counsel objected to this search term, arguing it was overbroad and that there was no evidence appellant used his electronic devices to facilitate his behavior and drug use. The juvenile court responded, “Well, initially with regards to the [electronic search condition], I am going to make that one of the orders. I agree, there may be nothing that we have specifically before us that indicates he uses his cell phone or other electronic devices to communicate with gang members or to purchase or sell drugs, but in this day and age it’s just such a common experience. I’m not going to deny probation the right to look into those sorts of things when someone’s on formal probation.”

DISCUSSION

Appellant argues the electronic search condition is unconstitutionally overbroad and bears no relationship to his offense. The People maintain the condition is not

unconstitutionally overbroad and that it is reasonable because it relates to potential future criminality. As the parties acknowledge, cases raising these issues are pending review in the California Supreme Court. (E.g., *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923;¹ *People v. Bryant* (2017) 10 Cal.App.5th 396, review granted June 28, 2017, S241937; *People v. Nachbar* (2016) 3 Cal.App.5th 1122, review granted Dec. 14, 2016, S238210; *In re J.E.* (2016) 1 Cal.App.5th 795, review granted Oct. 12, 2016, S236628.)

Standard of Review

“We review the court’s imposition of a probation condition for abuse of discretion. [Citation.] We review constitutional challenges to probation conditions de novo.” (*In re J.G.* (2019) 33 Cal.App.5th 1084, 1087-1088 (*J.G.*.)

Reasonableness

“Welfare and Institutions Code section 730, subdivision (b) ‘authorizes the juvenile court to “impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” . . . A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile.’ [Citation.]” (*In re J.B.* (2015) 242 Cal.App.4th 749, 753-754; see *In re Eric J.* (1979) 25 Cal.3d 522, 530 “[T]he most significant difference between minors and adults is that ‘[the] liberty interest of a minor is qualitatively different than that of an adult, being subject both to reasonable regulation by the state to an

¹ On May 9, 2019, the Supreme Court ordered *In re Ricardo P.* on calendar for May 30, 2019, at 1:30 p.m. in San Francisco.

extent not permissible with adults”]; *J.G.*, *supra*, 33 Cal.App.5th at p. 1088 [“Because juveniles are deemed to be more in need of guidance and supervision than adults, the trial court has even greater latitude in formulating the terms of juvenile probation”].) “The reasonableness and propriety of the imposed condition is measured not just by the circumstances of the current offense, but by the minor’s entire social history. [Citation.]” (*In re J.B.*, at p. 754.)

“The juvenile court’s discretion is not, however, unlimited.” (*J.G.*, *supra*, 33 Cal.App.5th at p. 1088.) A probation condition is invalid if it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality” (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*), superseded on another ground as stated in *People v. Wheeler* (1992) 4 Cal.4th 284, 290-292.) All three *Lent* requirements must be satisfied to invalidate a probation condition. (*Id.* at p. 486, fn. 1; *People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).)

The People concede the first two *Lent* factors are present here, but contend the third factor is not satisfied. They maintain the electronic search condition enables appellant’s probation officer to monitor appellant’s compliance with his other probation conditions and thus deter future criminality.

Our Supreme Court has recognized that a probation condition “that enables a probation officer to supervise his or her charges effectively is . . . ‘reasonably related to future criminality’” even if it “has no relationship to the crime of which a defendant was convicted.” (*Olguin*, *supra*, 45 Cal.4th at pp. 380-381.) In *In re P.O.* (2016) 246 Cal.App.4th 288, the minor committed the offense of public intoxication. (*Id.* at p. 291.) The

juvenile court imposed an electronic search probation condition despite the absence of direct evidence that the minor was buying or selling drugs. (*Id.* at p. 293.) It found that “people . . . present themselves on the Internet using drugs or . . . in possession of paraphernalia, and that’s the only way we can properly supervise these conditions” (*Ibid.*) The Court of Appeal agreed, noting that the condition “enables peace officers to review P.O.’s electronic activity for indications that P.O. has drugs or is otherwise engaged in activity in violation of his probation.” (*Id.* at p. 295.)

Appellant’s probation conditions require that he “[n]ot use or possess illegal drugs or medications not in [his] name; not possess drug paraphernalia, not use or possess alcoholic beverages; not to be in any place where illegal drugs are being used and not to associate with anyone who uses or possesses such substances” They also prohibit appellant from associating with gang members, from wearing gang-related apparel, from displaying gang signs or gestures and from engaging in assaultive or violent behavior. “[T]he electronic search condition is reasonable because it will allow law enforcement to monitor appellant’s compliance with these conditions.” (*J.G., supra*, 33 Cal.App.5th at p. 1089.) Accordingly, the juvenile court did not abuse its discretion by imposing the condition.

Overbreadth

Appellant asserts that even if the three *Lent* factors are not present, the electronic search condition is overbroad because it infringes on his right to privacy. He is correct that “[a] probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) As the

majority recently noted in *J.G.*, “[a] juvenile court does, however, have wider latitude in drafting probation conditions for juveniles than for adults.” (*J.G.*, *supra*, 33 Cal.App.5th at p. 1089.) “‘This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed. . . .’ [Citation.]” (*In re P.O.*, *supra*, 246 Cal.App.4th at p. 297.)

The electronic search condition at issue here permits law enforcement to search appellant’s text messages, voicemail messages, social media accounts, call logs, photographs, email accounts and internet browsing history. As in *J.G.*, “[t]hese methods of communication are reasonably likely to reveal evidence of appellant’s compliance with other probation conditions, including those that prohibit [gang activity,] drug and alcohol use and threats of violence against others. Limiting the search condition to these forms of digital communication reduces the likelihood that law enforcement will access medical records, financial information or other data unrelated to criminal activity.” (*J.G.*, *supra*, 33 Cal.App.5th at p. 1089.) We therefore conclude the condition is not overbroad.

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Charles S. Crandall, Judge
Michael L. Duffy, Judge
Superior Court County of San Luis Obispo

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